UNPUBLISHED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. FELIX AGUIN-GUERRA, *aka* Sixto Gabriel Morera Diaz, Defendant.	No. CR04-4051-MWB **REPORT AND RECOMMENDATION ON MOTION TO SUPPRESS**

I. INTRODUCTION

This matter is before the court on a Motion to Suppress filed by the defendant Felix Aguin-Guerra ("Aguin") on July 21, 2004 (Doc. No. 15). The plaintiff (the "Government") filed a resistance to the motion on August 6, 2004 (Doc. No. 19). Pursuant to the trial scheduling order entered June 6, 2004 (Doc. No. 10), motions to suppress in this case were assigned to the undersigned United States Magistrate Judge for the filing of a report and recommended disposition.

The court held a hearing on the motion on August 9, 2004. Assistant U.S. Attorney Michael M. Hobart appeared on behalf of the Government, and Aguin appeared in person with his attorney, Jason M. Finch. The Government offered the testimony of USICE Special Agent Daniel Canales. Aguin did not present any witnesses. The following exhibits were admitted into evidence: Gov't Exs. 1-4, Woodbury County, Iowa, Complaints against Aguin for traffic violations and making a false report; Gov't Exs. 5 &

6, Woodbury County Arrest Reports; Gov't Ex. 7, a Woodbury County District Court docket sheet; Gov't Ex. 8, an "aliases inquiry"; and Def's Ex. A, a USICE Form I-213.

The court has considered the evidence, the parties' briefs, and the arguments of counsel, and now submits the following report and recommended disposition of Aguin's motion to suppress.

Preliminarily, the Government has pointed out, and the court acknowledges, that Aguin's motion to suppress was filed out of time. Aguin's counsel makes the standard "press of other business" argument to justify the late filing of the motion, but does not explain why he did not request an extension of the motions deadline. Nevertheless, in the interests of justice, the court will consider the motion on its merits.

II. AGUIN'S CLAIMS; FINDINGS OF FACT

On May 20, 2004, Aguin was charged in a one-count indictment with knowingly completing a false "Employment Eligibility Verification Form," know as an "I-9," to secure employment in Sioux City, Woodbury County, Iowa. (*See* Doc. No. 1) According to the indictment, in completing the I–9 form, Aguin used a false State of Nebraska identification card and an unauthorized Social Security card to support a claim that he is a United States citizen named Sixto Gabriel Morera Diaz.

At the commencement of the hearing, Aguin's attorney stipulated to the facts set out in the Government's brief (Doc. No. 19). The following statement of facts is taken from the Government's brief, the testimony of Agent Canales, and the exhibits admitted into evidence at the hearing.

On April 26, 2004, Sioux City, Iowa, police officers arrested Aguin on a number of traffic charges. When he was arrested, he presented the officers with an expired driver's license and a Guatemalan identification card. He was charged under the name

"Sixto Graviel Morera-Diaz." By the time he was booked, he had given the officers at least four aliases with different dates of birth.

The Woodbury County Sheriff's office contacted the Law Enforcement Support Center ("LESC") in Vermont, in an attempt to verify Aguin's identity and to determine if he was in the United States legally. A representative of the LESC spoke with Aguin on the telephone, and the defendant advised the representative that his name was Sixto Gabriel Diaz and he was a citizen of Guatemala. The LESC placed a detainer on the defendant and faxed this information to the Sioux City USICE office.

On April 27, 2004, USICE agents Ricardo Rocha and Daniel Canales interviewed Aguin at the Woodbury County Jail. Aguin was not advised of his *Miranda* rights by the agents before or during questioning. During the interview, Aguin stated his true name is Felix Aguin-Guerra, he is a citizen of Guatemala, and he was in the United States illegally. At the suppression hearing, the Government advised these are the only statements by Aguin that the Government intends to offer into evidence at trial. Aguin's attorney indicated he does not object to the admissibility of Aguin's statement that his name is Felix Aguin-Guerra,[1] but he does object to the admissibility of Aguin's statement that he is in the United States illegally and is not a United States citizen.

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[1] In *INS v. Lopez-Mendoza,* 468 U.S. 1032, 1039, 104 S. Ct. 3479, 3479, 82 L. Ed. 2d 778 (1984), the Supreme Court held, "The 'body' or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred." *See United States v. Rodriguez-Arreola*, 270 F.3d 611, 618 (8th Cir. 2001); *United States v. Guevara-Martinez,* 262 F.3d 751 (8th Cir. 2001); *see also United States v. Del Toro Gudino*, __ F.3d __, 2004 WL 1631604 (9th Cir. July 22, 2004). However, this does not mean evidence concerning a defendant's identity that is obtained in violation of *Miranda* is admissible. If the defendant's identity is relevant to the charges against him, the Government still must prove the defendant's identity with untainted evidence. *See Rodriguez-Arreola*, 270 F.3d at 619. However, here, Aguin does not object to the admissibility of his un-*Mirandized* statement that he is Felix Aguin-Guerra.

III. ANALYSIS

In *Miranda v. Arizona,* 384 U.S. 436, 461, 86 S. Ct. 1602, 1620-21, 16 L. Ed. 2d 694 (1966), the Supreme Court held that the privilege against self-incrimination protects individuals from informal compulsion exerted by law enforcement officers during in-custody questioning. The *Miranda* rule has become an important and accepted element of the criminal justice system. See *Dickerson v. United States,* 530 U.S. 428, 120 S. Ct. 2326, 147 L. Ed. 2d 405 (2000). Here, Aguin claims his statements to USICE agents were obtained in violation of that rule.

Aguin argues his statements to USICE agents that he was a citizen of Guatemala and was in the United States illegally should be suppressed because he was not advised of his *Miranda* rights prior to questioning. The Government argues Aguin's statements are not protected by *Miranda* because of they are covered by the "routine booking exception." *See Pennsylvania v. Muniz,* 496 U.S. 582, 601, 110 S. Ct. 2638, 2650, 110 L. Ed. 2d 528 (1990); *United States v. Horton,* 873 F.2d 180, 181 n.2 (8th Cir. 1989). In construing *Muniz,* the Eighth Circuit Court of Appeals has held as follows:

> Interrogation for *Miranda* purposes refers to any questioning or conduct that the government officer should know is reasonably likely to elicit an incriminating response from the suspect. *Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S. Ct. 1682, 1689, 64 L. Ed. 2d 297 (1980). Thus, not all government inquiries to a suspect in custody constitute interrogation and therefore need be preceded by Miranda warnings. . . . [A] request for routine information necessary for basic identification purposes is not interrogation under *Miranda,* even if the information turns out to be incriminating. Only if the government agent should reasonably be aware that the information sought, while merely for basic identification purposes in the usual case, is directly relevant to the

> substantive offense charged, will the question be subject to scrutiny.

United States v. McLaughlin, 777 F.2d 388, 391-92 (8th Cir. 1985). *See Muniz,* 496 U.S. at 602 n.14, 110 S. Ct. at 2650 n.14 (during booking procedures, Government may not ask questions "that are designed to elicit incriminatory admissions"); *United States v. Brown*, 101 F.3d 1272, 1274 (8th Cir. 1996) (routine biographical data for basic identification purposes is exempted from *Miranda*)[2]; *see also United States v. Salgado*, 292 F.3d 1169 (9th Cir. 2002) (Pregerson, C.J., dissenting)*; United States v. Virgen-Moreno,* 265 F.3d 276, 293-94 (5th Cir. 2001) ("[Q]uestions designed to elicit incriminatory admissions are not covered under the routine booking question exception); *United States v. Gallardo*, 58 F. Supp. 2d 1018 (S.D. Iowa 1999) (*Miranda* warnings are required unless questions fall under "identification questions exception"); *United States v. Gonzalez-Deleon*, 32 F. Supp.2d 925 (W.D. Tex. 1998). *But see United States v. Salgado*, 292 F.3d 1169 (9th Cir. 2002); *United States v. Lugo*, 289 F. Supp.2d 790 (S.D. Tex. 2003).

The flaw in the Government's argument here is that the USICE agents who interviewed Aguin were not engaged in "routine booking" of Aguin when they interviewed him on April 27, 2004. Aguin had been booked the day before by the Woodbury County Sheriff's office. *See* Gov't Exs. 6 & 7. Instead, the USICE agents were interviewing Aguin to determine, at least in part, whether criminal charges against him were warranted.

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[2] *Brown* is one of a series of cases that have applied the *Muniz* "routine biographical data" exception to situations involving traffic stops. *See, e.g.*, *United States v. Rodriguez-Hernandez*, 353 F.3d 632, 635 (8th Cir. 2003); *United States v. Rodriguez-Arreola*, 270 F.3d 611, 617 (8th Cir. 2001). The court finds these cases, because of the very nature of traffic stops, do not apply to situations where questioning by law enforcement takes place in a jail cell. *Cf. Johnson v. Crooks*, 326 F.3d 995, 998 (8th Cir. 2003) (automobiles are inherently mobile, and motorists have a lessened expectation of privacy when traveling on the public highways).

The facts in this case are identical to those presented to the court in *United States v. Mata-Abundiz,* 717 F.2d 1277 (9th Cir. 1983). In *Mata-Abundiz,* the defendant was arrested and charged with violations of state law. While in jail on those charges, an INS investigator visited Mata in jail to obtain biographical information about his immigration status. The investigator did not advise Mata of his *Miranda* rights. During the interview, the investigator learned that Mata was a citizen of Mexico. The investigator then promptly obtained a warrant for Mata's arrest. The Ninth Circuit Court of Appeals reversed Mata's conviction for possession of a firearm by an illegal alien, holding that in–custody questioning by INS investigators must be preceded by *Miranda* warnings. *Id*. In its ruling, the court explained:

> [T]he questioning conducted by Investigator DeWitt had little, if any, resemblance to routine booking procedures. As the District of Columbia Circuit noted in *United States v. Hinckley,* 672 F.2d 115, 122-23 (1982), booking is essentially a clerical procedure, occurring soon after the suspect arrives at the police station. The *Hinckley* court emphasized three factors, all present here, that indicated that the challenged questioning was not booking: (1) the government agency involved does not ordinarily book suspects, (2) a true booking had already occurred and the agency had access to the information obtained, and (3) the questioning occurred well after the suspect was placed in custody (in *Hinckley,* five hours; here, 10 days). *Id.* These factors lead us to conclude that any analogy to routine booking procedures is unwarranted.

Mata-Abundiz, 717 F.2d at 1280. Applying the *Hinckley* factors to the facts in the present case, the court concludes that the statements made by Aguin to the USICE agents were not made as part of a routine booking procedure.

Accordingly, Aguin's statements to the USICE agents that he is in the United States illegally and is not a United States citizen should be suppressed. His statement to the

agents that his name is Felix Aguin-Guerra should not be suppressed because he has withdrawn his request to suppress that statement.

IV. CONCLUSION

For the reasons discussed above, **IT IS RECOMMENDED**, unless any party files objections to this Report and Recommendation within 10 days of the date of the report and recommendation, that Aguin's motion to suppress be **granted in part and denied in part**, as stated above.

Any party who objects to this report and recommendation must serve and file specific, written objections within 10 court days from this date. Any response to the objections must be served and filed within 5 court days after service of the objections.

If either party objects to this report and recommendation, that party must immediately order a transcript of all portions of the record the district court judge will need to rule on the objections.

IT IS SO ORDERED.

DATED this 20th day of August, 2004.

PAUL A. ZOSS
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT